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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

MOTION BY FOREMAN'S ASSOCIATION OF AMERICA FOR LEAVE TO INTERVENE AND BE RANGED AS A RESPONDENT

WALTER M. NELSON,
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1438 Dime Building,
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Foreman's Association of America, a voluntary association, by Walter M. Nelson, its attorney, respectfully says:

1. That Foreman's Association of America is a voluntary association of supervisors or foremen having its offices and principal place of business at Detroit, Michigan and members in various States of the United States;

2. That Foreman's Association of America has been and is a labor union within the meaning of the National Labor Relations Act (*Packard Motor Car Company v. N. L. R. B.*, — U. S. —, decided March 10th, 1947);

3. That Foreman's Association of America, Chapter No. 77 (R. 22) made the original charge for relief from unfair labor practices of petitioner affecting interstate commerce and intervener's members (Sec. 8 (1) and (3) and Sec. 2 (6) 49 Stat. 449, Title 29 U. S. C. A., Sec. 151) that initiated the proceedings before the National Labor Relations Board (R. 20, 22, 31) referred to in the Petition for Certiorari herein, and that its counsel and vice-president attended throughout the hearing before the Trial Examiner (R. 59 to 281), but that petitioner did not attend the oragl argument before the Board (R. 32);

4. That Foreman's Association of America, Chapter No. 77, moved for leave to intervene in the enforcement proceedings before the United States Circuit Court of Appeals for the Sixth Circuit (R. 15) and the same was granted (R. 17);

5. That counsel for Foreman's Association of America attended the argument in the United States Circuit Court of Appeals for the Sixth Circuit, but did not participate because the Court announced the probability that it would follow the rule lately laid down in *Packard Motor Car Company v. N. L. R. B.*, — U. S. —, decided March 10, 1947;

6. That as intervener in the United States Circuit Court of Appeals for the Sixth Circuit, counsel for Foreman's Association of America was duly served by petitioner here with a copy of the Transcript of Record on Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and Petition for Writ of Certiorari to United States Circuit Court of Appeals for the Sixth Circuit and Brief in Support Thereof;

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7. That after enforcement of the Order of the National Labor Relations Board was decreed by the United States Circuit Court of Appeals for the Sixth Circuit, and within the time for appeal therefrom, the Congress of the United States attempted to amend the National Labor Relations Act by an enactment commonly called and denominated Labor-Management Relations Act-1947 or the Taft-Hartley Act (Public Law 101—80th Congress, Chapter 120), which by its terms became effective August 22nd, 1947;

8. That it has been repeatedly announced in the public press and has been exemplified in Orders of Dismissal of proceedings by foremen before it and Petitions for Withdrawal of enforcement proceedings in the United States Circuit Courts of Appeal and other matters too numerous to mention in this Motion, that since August 22nd, 1947 said National Labor Relations Board has acted and must be expected in the future to act on the theory that the said Taft-Hartley Act (Public Law 101—80th Congress, Chapter 120) is valid and enforcible and that it cannot be expected to, and it will not, contest the Petition for Writ of Certiorari filed herein, nor will it contest or dispute the right of the petitioner herein to the relief prayed for;

9. That the granting of the relief prayed for by petitioner is destructive of and contrary to the rights of Foreman's Association of America and that while no present real controversy exists between said Edward G. Budd Manufacturing Company, petitioner, and National Labor Relations Board, respondent, a genuine controversy exists between said Edward G. Budd Manufacturing Company, petitioner, and Foreman's Association of America, intervener, and its members;

10. That Foreman's Association of America believes and desires to argue that if the Writ of Certiorari petitioned for herein is granted, the relief prayed for by said

Edward G. Budd Manufacturing Company, petitioner, should not be granted because (1) neither the protection of foremen from discriminatory discharges forbidden by the National Labor Relations Act nor the power of the National Labor Relations Board to prevent, punish or redress the same was amended or withdrawn by the Taft-Hartley Act, and if it be held to the contrary, (2) that said Taft-Hartley Act is invalid and unconstitutional and (3) that it is invalid and unconstitutional in the provisions relating to supervisors or foremen, the supervisors and foremen involved in the present controversy here being members of Foreman's Association of America;

11. That the real position of Foreman's Association of America is not comprehended in the position of *amicus curiae;* that it is a real party to the controversy and by statute subsequently enacted has become and is the only adverse real party in interest, and that the National Labor Relations Board is no longer a real party or the only real party or a reliable party in interest adversary to the claims and position of said Edward G. Budd Manufacturing Company, petitioner herein;

12. That Foreman's Association of America has no objection to the issuance of the Petition for Writ of Certiorari prayed for, Provided it is admitted to intervene and oppose and contest the granting of the relief requested by said Edward G. Budd Manufacturing Company, petitioner herein, upon grounds substantially as hereinabove set forth;

13. That as we are not here dealing with an administrative proceeding, but with a decree of a Court, it is appropriate and necessary that Foreman's Association of America be allowed to intervene herein to protect the rights of the foremen involved herein and the rights of its members generally which will be vitally affected.

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Eagle-Picher Mining and Smelting Company, et al., v. National Labor Relations Board (International Union of Mine, Mill and Smelter Workers Locals Nos. 15, 17, 107, 108 and 111, Intervener), 119 F. (2d) 903; *International Union of Mine, Mill and Smelter Workers Locals 15, et al., etc., Petitioners, v. Eagle-Picher Mining and Smelting Company, Eagle-Picher Lead Company, and National Labor Relations Board*, 325 U. S. 325, citing:

Amalgamated Utility Workers v. Consolidated Edison Co., 309 U. S. 261, 84 L. ed. 738, 60 S. Ct. 561;

National Licorice Co. v. National Labor Relations Board, 309 U. S. 350, 362, 363, 84 L. ed. 799, 809, 810, 60 S. Ct. 569;

Phelps-Dodge Corp. v. National Labor Relations Board, 313 U. S. 177, 193, 85 L. ed. 1271, 1282, 61 S. Ct. 845, 133 A. L. R. 1217;

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 218, 83 L. ed. 126, 134, 59 S. Ct. 206;

Williams v. Morgan, 111 U. S. 684, 28 L. ed. 559, 4 S. Ct. 638.

Wherefore, Foreman's Association of America prays that it be admitted as an intervener and as a party respondent and adversary to the ultimate relief prayed for by said petitioner and that it be granted such other, further and different relief as may be proper.

Respectfully submitted,

FOREMAN'S ASSOCIATION OF AMERICA,
By (s) WALTER M. NELSON,
Its Attorney,
1438 Dime Building,
Detroit 26, Michigan.

State of Michigan,
County of Wayne—ss.

On this 27th day of October, A. D. 1947 personally came before me Walter M. Nelson, who being by me first duly sworn, deposes and says that he has read the foregoing Petition for Leave to Intervene in the above entitled matter and that the same is true, except as to matters therein stated on information and belief, and that as to those matters he believes it to be true.

Louise C. Kushigian,
Notary Public, Wayne County, Michigan.
My commission expires December 1st, 1950.